No. 25-266

In the Supreme Court of the United States

CITY OF FRESNO, CALIFORNIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the dismissal of petitioners' takings claim on the ground that California law did not grant petitioners a property interest in water that the federal government delivered to other parties pursuant to contracts governing delivery and operation of water from a water project under federal reclamation laws.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and rule:

Miscellaneous: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-38a) is reported at 124 F.4th 876. The opinion of the Court of Federal Claims (Pet. App. 39a-78a) is reported at 148 Fed. Cl. 19. An additional opinion of the Court of Federal Claims is reported at 160 Fed. Cl. 215.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 2024. A petition for rehearing was denied on April 9, 2025 (Pet. App. 79a-81a). On June 18, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including September 6, 2025, and the petition was filed on September 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Reclamation Act of 1902, ch. 1093, 32 Stat. 388 (43 U.S.C. 371 *et seq.*), provides for federal financing, construction, and operation of irrigation works for reclamation of arid land, including water storage and distribution projects, through a scheme of "cooperative federalism." *California* v. *United States*, 438 U.S. 645, 650 (1978). "In short," a reclamation project is a federal "subsidy, the cost of which will never be recovered in full." *Ivanhoe Irrigation Dist.* v. *McCracken*, 357 U.S. 275, 295 (1958), abrogated on other grounds by *California*, 438 U.S. 645.

Although the federal government funds and often operates Reclamation Act projects, Congress made "clear that state law was expected to control in two important respects." *California*, 438 U.S. at 665. First, before the construction of a reclamation project, the government "would have to appropriate, purchase, or condemn necessary water rights in strict conformity with state law." *Ibid.*

Congress also specified that, once a project has been constructed, "state water law would control in the appropriation and later distribution of the water" to the extent it does not conflict with a congressional directive. *Nevada* v. *United States*, 463 U.S. 110, 122 (1983) (quoting *California*, 438 U.S. at 664) (emphasis omitted). Section 8 of the Reclamation Act instructs that "[n]othing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder," and that "the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with

such laws." 43 U.S.C. 383. It adds that "nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof." *Ibid.* A separately codified portion of Section 8 further provides that "[t]he right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. 372.

b. This case involves the Central Valley Project (CVP or Project). Pet. App. 3a. The Project "is a gigantic undertaking to redistribute the principal fresh-water resources of California" from the water-rich Sacramento River to the arid valley of the San Joaquin River. *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725, 728 (1950); see Pet. App. 5a (map). The CVP is now the Nation's "largest federal water management project," Pet. App. 3a, consisting of "a massive set of dams, reservoirs, hydropower generating stations, canals, electrical transmission lines, and other infrastructure" stretching across hundreds of miles, *id.* at 43a.

The Project was originally planned by the State of California but "was taken over by the United States in 1935 and has since been a federal enterprise," overseen pursuant to the Reclamation Act by the Bureau of Reclamation (Bureau) in the Department of the Interior. Pet. App. 44a (quoting *Gerlach*, 339 U.S. at 728). In administering the Project, the Bureau faces "an extremely difficult task: to operate the country's largest federal water management project in a manner so as to meet the Bureau's many obligations." *Id.* at 30a (quoting *Central Delta Water Agency* v. *Bureau of Reclamation*, 452 F.3d 1021, 1027 (9th Cir. 2006)). The Bureau's "con-

trol of the CVP water is subject to a plethora of federal statutes and regulations governing many areas including, but not limited to: (1) the release of the CVP yield, (2) water quality, and (3) the impact of the releases on the environment and wildlife." *San Luis & Delta-Mendota Water Auth.* v. *United States*, 672 F.3d 676, 682 (9th Cir. 2012) (citations omitted).

2. a. The Bureau has "entered into over 250 long-term contracts for the delivery of CVP water to various agricultural, industrial, and commercial entities in addition to municipal water agencies." *San Luis & Delta-Mendota Water Auth.*, 672 F.3d at 682-683. This case involves two categories of contracts.

First, acting under the Reclamation Act and subsequent federal legislation authorizing the Project, see *Gerlach*, 339 U.S. at 731-733, the United States originally obtained rights to use water from the San Joaquin River by entering into a series of contracts from 1939 to 1968 with various entities that previously held the water rights. See Pet. App. 6a-7a. Those entities are the predecessors in interest of the "Exchange Contractors," which are (along with the United States) respondents in this case, and their 1968 agreement is known as the "Exchange Contract." *Id.* at 6a-7a & n.4. The Exchange Contract makes San Joaquin River water available to the United States, conditioned on the United States' continued delivery to the Exchange Contractors of "substitute water" pursuant to specified conditions that vary between drought and non-drought years. See *id.* at 6a-8a.

Second, "[h]aving obtained from the Exchange Contractors rights to San Joaquin River water, the Bureau then contracted to deliver water to" the City of Fresno and various water districts in an area of the Project called the Friant Division. Pet. App. 8a. Those entities,

the "Friant Contractors," are (along with certain individual end users of the water, the "Friant Growers") petitioners in this case. See *id.* at 8a-9a & n.5. The parties have agreed that a particular 2010 "Friant Contract" is representative of the Bureau's contracts with the Friant Contractors. *Id.* at 9a n.6. The Friant Contract generally obligates the United States to deliver San Joaquin River water to the Friant Contractors, but it expressly states that the duty is "'subject to the terms of' the pre-existing Exchange Contract." *Id.* at 9a (quoting C.A. App. 368). The Friant Contract also immunizes the United States from liability for contract claims based on the government's responses to a drought unless those actions are "arbitrary, capricious, or unreasonable." *Id.* at 31a (quoting C.A. App. 402).

b. "In 2014, California was in the second year of a multi-year severe drought." Pet. App. 50a. The Governor declared a state of emergency that lasted until 2017. *Id.* at 11a. The drought conditions greatly limited the water available to the Bureau to meet the Project's needs. Based on those conditions, the Bureau determined that the Exchange Contract required it to allocate the San Joaquin River water available in 2014 primarily to the Exchange Contractors, while delivering to the Friant Contractors only the minimum amounts needed to meet public-health and safety needs, as well as amounts carried over from the previous year's allocation. *Id.* at 11a-12a.

3. Petitioners sued the United States in the Court of Federal Claims to challenge the Bureau's response to the 2014 drought. Their operative complaint alleges two claims: an unconstitutional taking without compensation of petitioners' property interests in the undelivered water, and a breach of the Friant Contract based on the same conduct. Pet. App. 110a-119a. In support

of the takings claim, petitioners allege that each of them "owns water rights" that "are recognized as property rights under California law." *Id.* at 84a-101a. The Exchange Contractors intervened in support of the United States. *Id.* at 6a n.3.

The Court of Federal Claims ruled against petitioners on both claims. Pet. App. 39a-78a. It dismissed the takings claim on the ground "that—as a matter of law—none of the [petitioners] possesses a property interest in the water supplied to them by or through" the Bureau. *Id.* at 69a; see *id.* at 68a-77a. The court explained that under controlling precedent, "state law 'define[s] the dimensions of the requisite property rights for purposes of establishing a cognizable taking.'" *Id.* at 70a (quoting *Klamath Irrigation Dist.* v. *United States*, 635 F.3d 505, 511 (Fed. Cir. 2011)) (brackets in original). And here, "California law" conferred "appropriative water rights"—the only kind of water rights that petitioners claim—not on them, but on the Bureau, as the owner of state permits to use river water for the Project. *Id.* at 70a-71a; see *Colorado* v. *New Mexico*, 459 U.S. 176, 179 n.4 (1982) (explaining that the "appropriation doctrine and the riparian doctrine are the two basic doctrines" of state water-rights law). The court also rejected petitioners' contention that their asserted property rights are "supported by federal law," noting that that theory "has been repeatedly rejected by state and federal courts" and that "[t]he cases upon which [petitioners] rely to support their arguments are inapposite." Pet. App. 73a, 75a. The court accordingly held that petitioners lack standing to pursue the takings claim. *Id.* at 69a, 77a.

The Court of Federal Claims also rejected petitioners' contract claim. Pet. App. 56a-68a. It first dismissed the contract claim as to the Friant Growers be-

cause they are not parties to the Friant Contract and do not qualify as third-party beneficiaries. *Id.* at 58a-63a. It then granted summary judgment for respondents as to the remaining petitioners. See *id.* at 14a. It concluded that the Bureau's actions "did not breach the Friant Contract" both because the Exchange Contract "necessarily trumped the subordinated contractual rights of the Friant Contractors," and because the Friant Contract "immunizes the government from a breach of contract claim where, as here," the Bureau's response to the 2014 "severe drought" was "not 'arbitrary, capricious, or unreasonable.'" 160 Fed. Cl. at 229, 235.

4. The court of appeals affirmed in a unanimous decision. Pet. App. 1a-38a.

a. With respect to the takings question, the court of appeals "reach[ed] the same conclusion as the Court of Federal Claims, which dismissed these claims based on the lack of a protected property interest." Pet. App. 32a-33a; see *id.* at 32a-37a. It framed that disposition as a dismissal for failure to state a claim upon which relief may be granted, rather than for lack of standing. *Id.* at 33a-34a.

The court of appeals began with precedent holding that "[i]n the context of water rights state law, not federal law, 'define[s] the dimensions of the requisite property rights for purposes of establishing a cognizable taking.'" Pet. App. 34a (quoting *Klamath*, 635 F.3d at 511) (second set of brackets in original). The court noted that "the Supreme Court has stated on several occasions" that "'the [Reclamation] Act clearly provided that state water law would control in the appropriation and later distribution of the water.'" *Ibid.* (quoting *Nevada*, 463 U.S. at 122, and citing *California*, 438 U.S. at 664) (brackets in original). And here, petitioners "do not have any water rights under California

law because," as state case law had already established, "it is [*the Bureau of*] *Reclamation*"—not petitioners—"that 'has appropriative water rights in the Central Valley Project.'" *Id.* at 35a (quoting *County of San Joaquin* v. *State Water Res. Control Bd.*, 63 Cal. Rptr. 2d 277, 285 n.12 (Cal. Ct. App. 1997), cert. denied, 522 U.S. 1048 (1998), and citing State Water Res. Control Bd. (SWRCB) Decision D-1641 (Mar. 15, 2000), aff'd, 39 Cal. Rptr. 3d 189 (Cal. Ct. App. 2006)).

The court of appeals emphasized that its result accords with the purpose of California's appropriation doctrine, which is to "reward initiative that allows water that would have otherwise sat worthless to be put to beneficial use." Pet. App. 36a (citation omitted). "This is exactly the type of action that [the Bureau] undertook pursuant to the Reclamation Act" to create and operate the Project, without which the water supply at issue "would not exist." *Ibid.* (citing 43 U.S.C. 372). California law thus "assign[ed] property rights in water" based on the "efforts of [the Bureau]" to make water available, not based on "the uses put to it by end users" such as petitioners. *Ibid.* Petitioners' contrary approach would, among other problems, create administrative difficulties by designating "millions of water right holders" in place of the "relatively few water purveyors subject to statewide regulatory authority." *Id.* at 37a (quoting SWRCB Decision D-1641, *supra*).

The court of appeals distinguished the other authorities cited by petitioners. It explained that petitioners "point[ed] to no California precedent persuasively supporting the proposition that the water delivered by [the Bureau of] Reclamation creates in the Friant Growers, or in the end users whose interests the Friant Contrac-

tors seek to represent, appropriative property rights" that could support a takings claim. Pet. App. 36a.

b. The court of appeals also affirmed the grant of summary judgment for respondents on the contract claim. Pet. App. 17a-32a. It agreed with the Court of Federal Claims both that "[the Bureau] did not breach the Friant Contract" by allocating water to the Exchange Contractors rather than petitioners, and that "even if any of the actions undertaken by [the Bureau] were a breach of the Friant Contract, [the Bureau] enjoyed immunity from liability because its actions could not be found to be arbitrary, capricious, or unreasonable." *Id.* at 17a.

c. Petitioners filed a petition for panel rehearing and rehearing en banc, primarily addressing the contract claim. See C.A. Doc. 128 (Mar. 3, 2025). The court of appeals denied the petition without calling for a response and with no noted dissents. Pet. App. 79a-81a.

ARGUMENT

The court of appeals correctly affirmed the dismissal of petitioners' takings claim on the ground that California law did not grant petitioners a property interest in water that the United States delivered to other parties pursuant to contracts governing the CVP. Petitioners currently challenge only that ruling and do not seek review of the court's separate conclusion that petitioners lack contractual rights to the water under the circumstances at issue. Pet. 15 & n.12. But the court's takings ruling depends on issues of state law, and petitioners do not contend that the decision below conflicts with any decision of another federal court of appeals or a state court of last resort on an important federal question. See Sup. Ct. R. 10(a). Petitioners' lack of contract rights under state law also complicates the presentation of

their intertwined takings claim. No further review is warranted.

1. The decision below is correct.

a. Petitioners contend (Pet. 15-21) that Section 8 of the Reclamation Act grants them "federally mandated" property rights to Project water, Pet. 6, notwithstanding any contrary state law. But the statute and precedent foreclose petitioners' assertion of a federal-law-based property interest in this context.

Section 8 provides that the Reclamation Act shall not be construed "to affect or in any way interfere with the laws of any State" governing water rights and directs the federal government to "proceed in conformity with such laws." 43 U.S.C. 383; see pp. 2-3, *supra*. In keeping with the plain statutory text, this Court has emphasized "on several occasions," Pet. App. 34a, that Section 8 "*clearly provided that state water law would control in the appropriation and later distribution of the water*," *Nevada* v. *United States*, 463 U.S. 110, 122 (1983) (quoting *California* v. *United States*, 438 U.S. 645, 664 (1978)); see *Texas* v. *New Mexico*, 602 U.S. 943, 961 (2024) ("§ 8 of the Reclamation Act require[s] the United States to comply with * * * state law"); *Sporhase* v. *Nebraska*, 458 U.S. 941, 959 (1982) ("[Section 8's] language mandates that questions of water rights that arise in relation to a federal project are to be determined in accordance with state law."). As the Court has explained—in a case that also involved the CVP—"Congress's decision to defer to state law" in the Reclamation Act has the salutary effect of averting "the legal confusion that would arise if federal water law and state water law reigned side by side in the same locality." *California*, 438 U.S. at 668-669.

This Court has already applied Section 8 and held that California state law determines property rights for purposes of takings claims involving the CVP. In *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 (1950), a takings case seeking "compensation for deprivation of riparian rights along the San Joaquin River in California caused by construction of * * * the Central Valley Project," this Court held that "the Court of Claims correctly applied the law of California as made applicable to these claims by Congress." *Id.* at 727-728, 755. *Gerlach* explained that courts "turn, as [the Reclamation] Act bids us, to the laws of the State to determine the rights and liabilities of landowner and appropriator" because "the federal law adopts that of the State as the test of federal liability." *Id.* at 742-743; see *id.* at 734 ("Congress proceeded on the basis of full recognition of water rights having valid existence under state law."). In yet another CVP-related case brought by petitioner City of Fresno, the Court explained that "the effect of § 8 * * * is to leave to state law the definition of the property interests, if any, for which compensation must be made." *City of Fresno* v. *California*, 372 U.S. 627, 630 (1963), abrogated on other grounds by *California*, 438 U.S. 645.[1] Other courts, too, look to state-law property

[1] The Court's 1963 decision also suggested that the above-quoted proposition was the *only* relevant "effect of § 8," rejecting an argument that Section 8 also requires the United States to comply with state-law conditions on the exercise of eminent domain to acquire water rights (a question not actually presented in that case or in this one). *City of Fresno*, 372 U.S. at 629-630. In *California*, the Court disavowed that "dictum" regarding eminent domain "to the extent that it implies that state law does not control even where not inconsistent with such expressions of congressional intent." 438 U.S. at 671-672 n.24; see *id.* at 672 (declining to otherwise "overrule" *City of Fresno*). But *California*, which embraced an *even broader* role

rights in this context and have "repeatedly rejected" petitioners' "federal law" theory of water rights. Pet. App. 73a; see *id.* at 34a, 74a-76a (collecting cases).

Petitioners' citations (Pet. 17) of "this Court's Reclamation Act precedents" are not to the contrary. In each of three cases cited by petitioners, the Court recognized that differently situated landowners held property rights under the laws of other States, not solely based on the federal Reclamation Act. In *Ickes* v. *Fox*, 300 U.S. 82 (1937), as the Court of Federal Claims explained below, "the landowners had appropriative rights * * * under Washington state law." Pet. App. 75a; see 300 U.S. at 94 (identifying rights "under the law of Washington" and "the express terms of the contract" at issue). Similarly, *Nebraska* v. *Wyoming*, 325 U.S. 589 (1945), recognized that "individual landowners have become the appropriators of the water rights" under "Wyoming law," while "intimat[ing] no opinion whether a different procedure might have been followed so as to appropriate and reserve to the United States all of these water rights" in other circumstances. *Id.* at 615, 629. And *Nevada* v. *United States*, *supra*, determined that, "[a]s in *Ickes* v. *Fox* and *Nebraska* v. *Wyoming,* the law of the relevant State [Nevada] and the contracts entered into" established appropriative rights in certain landowners, after emphasizing that the Reclamation Act "'*clearly provided that state water law would control in the appropriation and later distribution of the water*.'" 463 U.S. at 122, 126 (quoting *California*, 438 U.S. at 664); see Pet. App. 76a (distinguishing *Nebraska*

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for state law under the Reclamation Act than had the 1963 decision, did not repudiate the basic proposition that Section 8 leaves to state law the definition of property interests for takings purposes, which is the relevant point here.

and *Nevada*). None of those cases supports petitioners' assertion of a federal-law-based property right notwithstanding contrary California state law.

Petitioners also rely (Pet. 17) on language in Section 8 stating that "[t]he right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated" and that "beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. 372. But that language merely limits the scope of rights "*already*" granted under "state law" pursuant to the Reclamation Act. *United States* v. *Alpine Land & Reservoir Co.*, 878 F.2d 1217, 1229 (9th Cir. 1989). For example, a recipient of state-law water rights under the Reclamation Act could "forfeit his water right * * * '*if he fails to put the water to beneficial use*'" (such as when a speculator seeks only to stockpile water rather than put it to use). *Ibid.* (citation omitted); cf. *California*, 438 U.S. at 668 n.21. But the beneficial-use limitation is "of no consequence" where, as here, petitioners "have no right to receive [the disputed] Project water" in the first place. *Alpine Land*, 878 F.2d at 1229; see *Klamath Irrigation Dist.* v. *United States*, 635 F.3d 505, 516 (Fed. Cir. 2011) ("'Beneficial use is a necessary but not a sufficient condition to acquire a beneficial or equitable property interest'" in "Project water") (citation omitted). "Nothing in this language [of Section 8] suggests that third parties, including irrigators, could obtain title to appropriative water rights at Bureau projects other than through state law." *Klamath Irrigation Dist.* v. *United States*, 67 Fed. Cl. 504, 516 (2005), vacated and remanded on other grounds, 635 F.3d 505.[2]

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[2] In *Klamath*, another unsuccessful takings challenge to the Bureau's responses during a drought, the courts rejected an argument essentially identical to petitioners'. The Court of Federal Claims

b. Petitioners alternatively contend (Pet. 21-28) that California state law grants them property rights in the Project water at issue. But as the courts below explained, petitioners "do not have any water rights under California law" because California cases establish that "it is [*the Bureau of*] *Reclamation* that 'has appropriative water rights in the Central Valley Project.'" Pet. App. 35a (quoting *County of San Joaquin* v. *State Water Res. Control Bd.*, 63 Cal. Rptr. 2d 277, 285 n.12 (Cal. Ct. App. 1997), cert. denied, 522 U.S. 1048 (1998), and citing SWRCB Decision D-1641 (Mar. 15, 2000), aff'd, 39 Cal. Rptr. 3d 189 (Cal. Ct. App. 2006)); see *id.* at 70a-75a (discussing those and other California cases). Petitioners attempt (Pet. 24-26) to limit those cases to their facts, but they "point to no California precedent" supporting their contrary view, Pet. App. 36a.

Petitioners also assert (Pet. 21-24) that the California-law ruling below conflicts with other decisions of the Federal Circuit. But that court, unlike the California state courts, is not the authoritative interpreter of California law. In any event, petitioners overread the two Federal Circuit cases on which they rely. *Casitas Mu-*

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identified "sundry reasons" why Section 8 does not support free-standing property rights "derive[d] directly from Federal law," and it specifically distinguished the cases on which petitioners rely. *Klamath*, 67 Fed. Cl. at 516; see *id.* at 516-523. On appeal, the Federal Circuit agreed that "the takings question depends upon * * * Oregon property law," and it certified relevant questions to the Oregon Supreme Court. *Klamath Irrigation Dist.* v. *United States*, 532 F.3d 1376, 1377 (2008). After the state court answered, the Federal Circuit remanded for further consideration of the takings claim under Oregon law. *Klamath*, 635 F.3d at 515-520. On remand, the Court of Federal Claims again rejected the takings claim under state law (after a change in caption), *Baley* v. *United States*, 134 Fed. Cl. 619 (2017), and the Federal Circuit affirmed, 942 F.3d 1312 (2019), cert. denied, 141 S. Ct. 133 (2020).

nicipal Water District v. *United States*, 708 F.3d 1340 (Fed. Cir. 2013), is distinguishable because, as the Court of Federal Claims explained below, in that case a "contract with the United States required the water district to secure appropriative rights by obtaining permits," Pet. App. 76a.[3] Similarly, the statement that they quote (Pet. 23) from *Baley* v. *United States*, 942 F.3d 1312, 1321 (Fed. Cir. 2019), cert. denied, 141 S. Ct. 133 (2020), merely summarizes prior decisions in that litigation, which had recognized that under Oregon law, "beneficial use alone does not always give the user a property interest in a water right appropriated by another," and "other factors" including "any contractual relationships" "must be considered in determining whether a beneficial or equitable property interest exists," *Klamath*, 635 F.3d at 518; see p. 13 & n.2, *supra* (discussing *Klamath-Baley* litigation). Those cases do not support the assertion of state-law water rights by petitioners, who hold neither contract rights to the water under the circumstances at issue nor appropriative rights secured by permits under California law. See pp. 6-9, *supra*.

2. The decision below does not conflict with the decision of another United States court of appeals or of a state court of last resort on any important federal question. See Sup. Ct. R. 10(a). Petitioners' arguments depend heavily (and in some respects, exclusively, see p. 14, *supra*) on issues of state law for which the California Supreme Court, not this Court, is the final authority. Cf. p. 14 n.2, *supra* (discussing the Federal Cir-

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[3] Petitioners fault the Federal Circuit for not citing *Casitas*, Pet. 21, but petitioners' appellate briefs also did not cite *Casitas*, C.A. Docs. 70 (Mar. 7, 2023) & 115 (Nov. 9, 2023). Regardless, the Claims Court persuasively addressed the case in the ruling affirmed below.

cuit's certification to the Oregon Supreme Court of similar state-law takings issues in *Klamath*).

Moreover, to the extent that petitioners do raise a federal question, they do not assert that it is the subject of a circuit split. Instead, they ask this Court to "correct[]" an allegedly "erroneous" decision "within the Federal Circuit's exclusive jurisdiction." Pet. 15-16. But Reclamation Act issues arise in various contexts that are not committed to the Federal Circuit's exclusive jurisdiction, as evinced by reliance in the decisions below on Ninth Circuit case law that accords with the result here. See Pet. App. 37a (citing *Israel* v. *Morton*, 549 F.2d 128, 132 (9th Cir. 1977)); *id.* at 74a (citing *San Luis Unit Food Producers* v. *United States*, 772 F. Supp. 2d 1210, 1244 (E.D. Cal. 2011), aff'd, 709 F.3d 798 (9th Cir.), cert. denied, 571 U.S. 954 (2013)); *id.* at 75a (citing *Westlands Water Dist.* v. *United States*, 153 F. Supp. 2d 1133, 1149 (E.D. Cal. 2001), aff'd, 337 F.3d 1092 (9th Cir. 2003)); see also p. 13, *supra* (citing *Alpine Land*, 878 F.2d at 1229). Petitioners' failure to identify a circuit split, despite multiple courts of appeals having addressed related issues, further militates against their request for error correction (even apart from the absence of any error below, see pp. 10-15, *supra*).

3. Finally, this case would not be an "ideal vehicle for the Court to revisit Section 8 of the Reclamation Act," contra Pet. 29, because petitioners' takings claim fails for additional reasons independent of the court of appeals' conclusion that they lack a protected property right to the Project water at issue. Even if petitioners could theoretically assert some form of property interest, the Court of Federal Claims correctly explained that they "cannot assert property rights greater than those secured through their contracts." Pet. App. 77a;

cf. *Baley*, 942 F.3d at 1341 (holding that the Bureau's drought responses "did not constitute a taking" because the plaintiffs' "water rights were subordinate to" other parties' rights under Oregon law). As explained, the courts held below that petitioners lack contractual rights to the water under the circumstances at issue based on two separate aspects of the governing contracts, pp. 6-7, 9, *supra*, and petitioners chose not to seek review of that ruling in this Court, Pet. 15 & n.12. Such case-specific complications provide additional grounds for denying review of the intertwined takings question in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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